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Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED
AUG 19 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Oral Ex Parte Presentations
MM Docket No. 93-25

Dear Ms. Salas:

On August 18, 1998, representatives of Noggin, Children's Television Workshop ("CTW") and Viacom Inc. ("Viacom") met with legal counsel to four of the Commissioners and with staff of the International and Cable Services Bureaus to discuss the above-referenced proceeding, specifically the qualification of Noggin as a "national educational programming supplier" under Section 25(b)(3) of the 1992 Cable Act. The comments and reply comments filed by CTW in the proceeding were also mentioned.

The Noggin representative was Tom Ascheim, the CTW representatives were Janice Hearty, Barbara Gardner and Mark MacCarthy, and the Viacom representative was Anne Lucey. The meetings were held with the following individuals:

Ari Fitzgerald, Office of Chairman Kennard
Anita Wallgren, Office of Commissioner Ness
Helgi Walker, Office of Commissioner Furchtgott-Roth
Rick Chessen, Office of Commissioner Tristani
Rosalee Chiara, J.T. Taylor, and Maryanne McCormick, International Bureau,
and Eloise Gore, Cable Services Bureau

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The Noggin, CTW and Viacom representatives described the concept and mission of Noggin, its ownership and management structure, and how the Commission might craft rules of general applicability for similarly structured ventures in order to qualify for the setaside. What follows is a summary of those descriptions.

The Concept and Mission of Noggin

Noggin is a new, *commercial-free*, high quality, educational program service targeted to children 2-11 years old. Set to launch in January 1999, Noggin was formed this past May by CTW, a not-for-profit entity, and by Nickelodeon, a division of Viacom and a for-profit company. Not only will Noggin benefit from the children's programming expertise of both CTW and Nickelodeon for the development of new, original programming, but the first learning channel for kids will feature classic programming from the libraries of both companies. Noggin will tap into CTW's library for episodes of "Sesame Street," "The Electric Company," "Ghostwriter" and "3-2-1 Contact," and into Nickelodeon's library for episodes of "Blue's Clues," "Nick News," "Wild Side" and "Gullah Gullah."

The Ownership and Management Structure of Noggin

Noggin is a free-standing for-profit entity organized in the form of a Delaware limited liability company. Both CTW and Nickelodeon are committed to the venture for a minimum of five years. Noggin is truly a 50/50 joint venture in that CTW and Nickelodeon each owns half of the equity and each holds an equal vote on the Management Committee which governs Noggin.¹ Accordingly, CTW and Nickelodeon each exercises negative control of Noggin, including Noggin's editorial matters. Under the terms of the joint venture, any approval by the Management Committee must be unanimous, unless otherwise specifically agreed. Except for certain extraordinary and financial matters reserved to the Management Committee, the day-to-day operations of Noggin are governed by a CEO, who was appointed by the Management Committee and who can be removed only with its approval. The CEO's management team will be appointed by the CEO, but is subject to the approval of the Management Committee.² CTW and Viacom each retains negative voting control unless and

¹ For accounting purposes, Viacom may acquire an additional 1% of equity from CTW within the first year after the end of the venture's first break-even year. In such event, however, CTW would retain its 50% voting share.

² It should be noted that the chief programming officer, who also is appointed by the CEO subject to the approval of the Management Committee, can be removed unilaterally by Nickelodeon, but only after meaningful consultation with CTW and the CEO. Any replacement
(continued...)

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until a partner's percentage equity interest falls below 25%, at which time the vote will correspond with each partner's level of equity.

Suggested Rules of General Applicability for Ventures Structured Similarly to Noggin

We argued that a joint venture structured similarly to Noggin should satisfy any definition the FCC may adopt for a "national educational programming supplier" qualifying for the setaside. We discussed various means of insuring the *bona fides* of a qualifying Section 25(b) non-profit/for-profit joint venture. Such means might include the following requirements:

1. A 50/50 governance structure, with the non-profit and for-profit venturer each having 50% of the venture's votes on all matters, equal Board or Management Committee representation, and shared editorial control. Satisfaction of this criterion should be mandatory and non-waivable, in order to assure that the "voice" of the non-profit is reflected in the venture's programming on the setaside capacity.
2. Meaningful equity participation by the non-profit (for example, a contribution of 40% or more of the venture's equity).
3. Independent eligibility of the non-profit co-venturer for the setaside.
4. Demonstrable experience by the non-profit in the production and/or distribution of programming of an educational or informational nature, as measured by a benchmark number of hours of such programming produced or distributed, or by annual expenditures on such programming of a minimum dollar value (see 47 U.S.C. § 612(i)(3), defining a "qualified educational programming source" as one that spends at least \$15,000,000 annually on certain types of educational or instructional programming). This criterion might be in lieu of meeting the suggested equity contribution requirement.
5. A legal commitment by the non-profit to the joint venture for a fixed term of years.

We also discussed means for determining compliance with the statute and the Commission's implementing rules, should our suggestions be adopted. For example, we discussed the potential issuance of declaratory rulings on a particular joint venture's eligibility for the setaside upon request by program providers, DBS providers, or members of the public. We suggested that DBS providers might be required to post a list of the programming carried in

²(...continued)

chief programming officer must be approved by the Management Committee.

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satisfaction of the setaside on the Internet, much as cable television systems must maintain in their local public inspection files a list of all broadcast television stations carried in fulfillment of the must-carry requirements (see FCC Rule 76.302(a)).

Finally, we provided each office with a copy of the attached flyer describing Noggin and its educational mission.

Pursuant to Rule 1.1206(b)(2), an original and one copy of this letter are being submitted to the Secretary.

Respectfully submitted,



Barbara K. Gardner

BKG/msg

Enclosure

cc (by hand delivery):

Ari Fitzgerald, Office of Chairman Kennard

Anita Wallgren, Office of Commissioner Ness

Helgi Walker, Office of Commissioner Furchtgott-Roth

Rick Chessen, Office of Commissioner Tristani

Rosalee Chiara, International Bureau

J.T. Taylor, International Bureau

Maryanne McCormick, International Bureau

Eloise Gore, Cable Services Bureau



Heads-up learning for kids. From the #1 network for kids and the #1 producer of educational children's programs comes a unique channel where kids and families will be encouraged to "use their Noggin." In an unprecedented partnership, Nickelodeon's kid expertise will be combined with the educational expertise of Children's Television Workshop to create the first learning channel for kids - one that their parents will appreciate.

Noggin will plug into kids' natural curiosity, enthusiasm and desire to learn. Targeted to kids 2-11 years old and their parents, Noggin will celebrate the joy of learning and encourage active participation and interaction.

Noggin will feature high quality programming produced by both Nickelodeon and CTW. Sesame Street, an American treasure and the crown jewel of CTW's program library, has only been available on public television...until now. Noggin will tap into the over 3,000 hours of Sesame Street programming to create showcases for all your Sesame Street favorites, including Big Bird, Ernie, Bert and Elmo, as well as vintage Sesame Street classics with celebrity guest appearances from the past 25 years. Noggin brings together such solid program favorites as Blues Clues, Nick News & The Electric Company from the two big powerhouses in children's television and will spawn the development of new original production.

Noggin will deliver what kids and parents want. Recent research confirms that kids, parents and teachers readily embrace the Noggin concept. Parents welcome the idea of a channel to teach their kids learning skills. And kids indicate that they want to learn, but in a fun and interactive manner.

Noggin is a BIG idea. The creation of on-line educational content will take advantage of emerging technologies to provide a truly interactive learning experience for kids. And the opportunity to partner with teachers, parents and the community will build Noggin into a multi-dimensional tool to help kids navigate their world.

Welcome to the first learning channel for kids!

NICKELODEON



CTW
SESAME STREET